IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Harichand vs. Smt. Tanni Sethani Karnani Dharamshala(Trust) Suratgarh & anr.

S.B. Civil Second Appeal No.4/84 against the judgment and decree dated 22.12.83 passed by the Addl. District Judge No.2, Hanumangarh in Civil Appeal No.4/82.

Date of Judgment: May 24, 2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr.S.G. Ojha for the appellant.
Mr.M.R.Mehta,for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

The appellant is aggrieved against the judgment and decree passed by the two courts below dated 7.1.1981, passed by the trial court of eviction of the appellant-tenant and dismissal of the appeal by the appellate court by judgment and decree dated 22.12.1983.

Brief facts of the case are that plaintiff no.1-Trust impleading plaintiff no.2 Banshi Dhar also as party, filed the suit for eviction of their tenant Harichand on the ground of default in payment of rent and sub-letting of the suit premises by the tenant-defendant. The trial court

determined the interim rent as required by Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950'). The plaintiff committed default in payment of rent by not depositing the rent as required under Section 13(4) of the Act of 1950, therefore, an application was submitted by the plaintiff for striking off the defence of the appellant-defendant-tenant, upon which the defence of the appellant-tenant-defendant was struck off by the order of the trial court dated 12.1.1979. That order was never challenged by the appellant-tenant by preferring appeal. Therefore, the trial proceeded. In the trial court, plaintiff no.2 gave his statement and stated that he is the Manager of plaintiff no.1-Dharamshala and defendant took the premises in dispute on rent from plaintiff no.2 and the tenant defendant executed the rent deed on 1.7.1971. He stated that defendant did not pay the rent from 1.1.1975 and said default continued till the filing of the suit. The suit was filed on 27.6.1977 and by that time, more than six months' rent became due in the defendant. The plaintiff's witness also stated that the defendant handed over possession of the suit property to one Bal Kishan and the tenant shifted his business in the *Sabji-mandi* and started business of vegetables.

The defendant's plea in the written statement was that said Bal Kishan was his servant and, therefore, he was sitting in the suit shop. The defendant admitted that he took a shop in *Sabji-mandi* and running

his business of vegetables in that shop. It is submitted by the defendant that his son is grown-up, therefore, he was in need of expansion of business, therefore, he took the new shop also. It is also submitted that he and his son both are also sitting in the shop in dispute.

So far as default is concerned, the defendant submitted that he paid the rent to the plaintiff and when he refused to accept the rent when it was offered in the presence of one Chandra Bhan and the alleged Bal Kishan, the plaintiff refused to accept the rent, therefore, defendant deposited the rent from the Month of January, 1975 to April, 1975 in the court of Munsif, Suratgarh under Section 19(A) of the Act of 1950.Thereafter, the defendant continued to deposit the rent in the court. Therefore, the defendant has not committed any default in payment of rent.

The defendant though appeared to give his statement but only for the limited purpose as he was denied opportunity to rebut the statement of the plaintiff on the ground of default and sub-letting because of the reason of striking off the defence of the defendant.

It will be worthwhile to mention here that the final arguments were heard by the trial court and the case was fixed for pronouncement of the judgment and at this stage an application was submitted by the defendant-tenant-appellant under Order 6 Rule 17 C.P.C. for taking an objection that the suit has been filed on behalf of the Trust whereas the

Trust is not registered and no authority has been filed by plaintiff no.2 to represent the Trust, therefore, the suit of the plaintiffs is not maintainable. Said application filed under Order 6 Rule 17,C.P.C. was dismissed by the trial court while deciding the suit itself. The trial court dismissed the application under Order 6 Rule 17,C.P.C. on the ground that the arguments have already been heard and the plaintiff filed the application after inordinate delay. Another ground for rejection of the application was that the defendant himself admitted that plaintiff no.2 was receiving the rent from the defendant, therefore, he admitted plaintiff no.2 to be his landlord, therefore, also the application for amendment of the written statement has been filed without any lawful reason.

The trial court as stated above, decreed the suit of the plaintiff on the ground of default as well as on the ground of sub-letting but it will be pertinent to mention here that the trial court itself held that the plaintiff failed to prove that defendant did not pay the rent of the suit-shop for more than six months prior to the filing of the suit but since the defendant has not complied with the provisions of sub-section (4) of Section 13 of the Act of 1950 by depositing the rent in the court in time and his defence has been struck off, therefore, there is no bar in passing the decree for eviction against the defendant.

The tenant preferred appeal against the judgment and decree of

the trial court dated 7.1.1981. It is pertinent to mention here that before the first appellate court, only argument raised by the appellant-tenant was with respect to the wrongful rejection of the application of the defendant filed under Order 6 Rule 17 C.P.C. by the trial court and challenge to decree passed on the ground of default but the decree has not been challenged by which the trial court decreed the suit of the plaintiff on the ground of sub-letting by the defendant-tenant.

Following substantial questions of law were framed by this Court while admitting the appeal on 6.8.1986:-

> "*(1) Whether in case the finding of the appellate court relating to the question of default is upheld, the subsequent provisions relating to deposit of provisional rent becomes inconsequential and the defendant's defence could not be struck out?*
>
> *(2) Whether the application for amendment filed by the defendant has been erroneously disallowed and as such the judgment stands vitiated?*
>
> *(3) Whether in view of the finding of the appellate court regarding the question of default and the findings of the sub-letting having not been affirmed by the first appellate court, any decree for eviction could be passed?*"

Before proceeding to decide the substantial question of law no.1, it will be appropriate to mention here that the plaintiff filed the suit for eviction against defendant-tenant on the ground of default from 1.1.1972 to June, 1977 and despite taking defence by the defendant

that he deposited the rent of the period from 1.1.1975 to June, 1977 in his evidence, he did not state a single word nor he tendered in evidence the rent receipts by which he deposited the rent in court under Section 19A of the Act of 1950. Not only this, it appears from the statement of plaintiff no.2-Banshidhar that despite producing the rent receipts in the trial court he was never confronted with those rent receipts. However, in cross-examination, plaintiff no.2 admitted that he submitted the application withdrawing the rent from the court of Munsif,Suratgarh. At this stage also, there was no suggestion that the entire rent upto the filing of the suit has been deposited by the defendant-tenant under Section 19A of the Act of 1950 and that has been withdrawn by the plaintiff. Not only this but even there is no suggestion that the defendant did not commit any default in payment of the rent. It appears from the judgment of the trial court that since while determining the rent, the rent receipts of the case under Section 19A were taken into account, therefore, only the trial court held that in view of the said rent receipts, rent of only four months was due in the defendant at the time of filing of the suit. The trial court did not examine the validity of the deposit and also could not have looked into those receipts which were not tendered in evidence and were not exhibited. It will be worthwhile to mention that the defendant did not challenge the order of the trial court denying him the opportunity to lead evidence even before the

trial court or thereafter in the appeal which is apparent from the judgment of the first appellate court dated 22.12.1983.

Before the first appellate court the only ground taken was that once it has been held that the defendant has not committed default in payment of rent for six months or more than six months, prior to the date of filing of the suit, then the defendant was not required to deposit the rent under Section 13(4) despite the fact of determination of rent by the trial court under Section 13(3). In view of the above, the finding of the trial court on the issue of first default itself is based on no evidence and, therefore, liable to be set aside.

The appellate court also could not appreciate this important fact and this could have happened because of the fact that the only ground argued before the first appellate court was that the defendant was not under obligation to deposit the rent during the pendency of the suit in the light of the finding of the trial court that the defendant has not committed any default in payment of the rent prior to filing of the suit. So far as the argument which was advanced by the defendant before the trial court as well as before the first appellate court appears to be correct and both the courts below erred in law in holding that the suit of eviction can be decreed on the ground of first default as provided under clause (a) of sub-section (1) of Section 13 of the Act of 1950 on mere ground that defendant has not deposited rent during pendency of

the suit under Section 13(4) and his defence has been struck off. Despite striking out of the defence of the defendant, the plaintiff is required to prove default in payment of rent by the tenant of six months prior to filing of the suit by the plaintiff.

The rent is determined under Section 13(3) of the Act of 1950 and the tenant is required to deposit the rent in stipulated period as given in Section 13(4) itself. Consequence of not depositing the rent is provided under sub-section (5) of Section 13 of the Act of 1950. As per sub-section (5) of Section 13, if tenant failed to deposit or pay any amount as determined under sub-section (3), the court can pass the order striking out the defence of the default of the tenant. The prohibition against passing eviction decree on compliance of sub-section (4) of Section 13 by the tenant is provided under sub-section (6) of Section 13 which provides “after a tenant makes a deposit or payment as required by sub-section (4), no decree for eviction on the ground specified in clause (a) of sub-section (1) shall be passed by the court against him.” Therefore, on non-deposit of rent as provided under sub-section (4) of Section 13, the decree can be passed only on the ground as provided in clause (a) of sub-section (1) of Section 13 of the Act of 1950. Clause (a) of sub-section (1) of Section 13 of the Act of 1950 only provides that no decree for eviction of the tenant shall be passed unless the court is satisfied that “the tenant has neither paid nor tendered the amount of rent due

from him for six months." These six months refer to the period prior to the filing of the suit. Therefore, even in case where the tenant failed to deposit the rent and his defence is struck off, even then the plaintiff landlord is required to prove that the defendant has committed default in payment of rent of six months and that period should be prior to filing of the suit. The court cannot pass decree of eviction under clause (a) of sub-section (1) of Section 13 of the Act of 1950 merely on the ground that defence of tenant has been struck off or he has not deposited the rent under Section 13(4).

In view of the above, the finding of the two courts below on the ground of default with the reasons given by the two courts below cannot stand and liable to be set aside. But at the same time, in view of the fact that the finding of both the courts below on default of tenant for the period prior to the filing of the suit is concerned, is based on no evidence. Rather say, contrary to the evidence available on record and that is the statement of P.W.-1(plaintiff no.2) who categorically stated that the defendant neither paid the rent nor tendered the rent to him for more than six months for the period falling prior to the filing of the suit.

Therefore, so far as the decree passed by the two courts below on the ground of committing default by the tenant is concerned, that is upheld with different reasons.

Substantial question of law no.2 is with respect to the rejection of the application filed by the defendant seeking amendment of the written statement and for taking the ground that the suit of the plaintiff is not maintainable because of the reason that the plaintiff's suit has been filed by the Trust and that Trust is not registered. The plaintiff no.2 has no authority to file the suit on behalf of plaintiff no.1. So far as rejection of the said application by the trial court is concerned, no fault can be found, rather say the trial court had no jurisdiction to entertain the application of the defendant when the case has already put for pronouncement of the judgment after conclusion of hearing and the position of law is well settled that after hearing arguments, when the court fixes the case for pronouncement of judgment, the court becomes functus officio for all other purposes except for the purpose of pronouncement of judgment or for the purpose of taking the steps which the law specifically permits. However, the appellant's application for amendment could have been considered by the first appellate court even in such circumstances. The first appellate court considered the said application and concurred with the finding of the trial court that the defendant himself admitted that he was paying rent to plaintiff no.2 and it was also the case of the plaintiffs that plaintiff no.2 was receiving the rent from defendant. Therefore, in terms of the definition provided under the Act of 1950, the plaintiff no.2 was also landlord and,

therefore, could have maintained the suit of the eviction of the tenant. In view of the above, it is held that the application of the defendant filed under Order 6 Rule 17,C.P.C. was rightly dismissed by the two courts below.

The third substantial question of law is that whether the decree for eviction could have been maintained by the first appellate court on the ground of sub-letting when the first appellate court has not affirmed the said finding. The arguments appears to be quite attractive but the fact remains is that the appellant-defendant himself did not challenge the said finding of the trial court on the ground of sub-letting which is apparent from the judgment of the first appellate court. From the judgment of the first appellate court, it appears that the said ground was not raised by the appellant-tenant before the first appellate court. It is also not the case of the appellant-tenant that in fact said ground was pressed by the appellant-tenant before the first appellate court and the first appellate court did not consider the said ground of the appellant challenging the finding of the trial court on issue of sub-letting. No review petition has been filed before the first appellate court for getting the position clear on the question whether under what circumstances the said issue was not decided by the first appellate court. Otherwise also, it will be futile exercise if the matter is remanded back to the first appellate court for deciding the issue of sub-

letting in the facts and circumstances of the case when there is evidence available on record in support of sub-letting of the suit-shop by the defendant to Bal Kishan. Presence of Bal Kishan is admitted in the written statement itself. Defendant's taking different shop is also admitted.

Therefore, in the light of the finding recorded by the trial court supported by the evidence, I do not find that the decree of the courts below can be set aside on issue of sub-letting. The first appellate court and the trial court both held that the defendant committed default in payment of rent during the pendency of the suit. This Court found that the defendant also committed default in payment of rent for the period of more than six months from the period prior to the date of filing of the suit. Therefore, substantial question no.3 is also decided against the appellant.

In view of the above, the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.